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4. LEASE—*Action for breach of contract—Sale of lease—Burden of proof as to value of lease.* If a lease is sold for the refusal of the lessee to carry out his contract of lease, the burden is on the lessee, in an action for damages, to show that the lease did not bring its value. The amount obtained at a public sale fairly made, after due notice to the lessee, is *prima facie* the true value.

TURNBULL AND OTHERS v. MANN.—Decided at Richmond, January 7, 1897.—*Harrison, J.*

1. LIENS—*When to be marked satisfied—Section 2498 of Code.* The object of sec. 2498 of the Code is to afford a summary remedy for having marked satisfied the liens therein mentioned upon proof that the debt has been actually paid or discharged and was not intended to enable persons to have such liens marked satisfied because liable to be defeated by presumption of payment or because barred by the statute of limitations.

HAUPT v. TEBAULT.—Decided at Richmond, January 7, 1897.—*Buchanan, J.*

1. NEW TRIALS—*Payment of costs.* Where a new trial has been granted upon condition of paying the costs of the former trial, as provided by sec. 3542 of the Code, it is sufficient if the costs are paid or tendered at any time before the order granting the new trial has been set aside, and after such tender or payment it is error to rescind the order for the new trial.

CHILDRESS' ADM'X v. CHESAPEAKE & OHIO RAILWAY Co.—Decided at Richmond, January 7, 1897.—*Keth, P.*

1. PLEADING—*Declaration—Defective counts—Harmless error.* Where two counts in a declaration in an action for personal injuries state in detail all the circumstances connected with the occurrence and there has been a verdict for the plaintiff, which was set aside on a demurrer to the evidence, the Court of Appeals will not reverse the judgment of a trial court sustaining a demurrer to another count in the declaration stating the same case in very general terms, although the count may have been good. If there was error, it was harmless.

2. EVIDENCE—*Dangerous locality—Opinions of witnesses.* In an action for personal injuries, witnesses cannot be allowed to express their opinions as to whether the locality at which the injury was inflicted was dangerous or not.

3. BILL OF EXCEPTION—*When not considered by appellate court—Relevancy of evidence—Answer of witness.* If a bill of exceptions to the ruling of the trial court allowing or refusing to allow a question to be answered by a witness, fails to give the answer of the witness, or what is expected to be proved by him, the appellate court cannot determine the relevancy, admissibility or value of the answer, and the exception will not be considered.

4. DEMURRER TO EVIDENCE—*What is admitted—Case at bar—Railroad crossing.* By a demurrer to the evidence the party is considered as admitting the truth of his adversary's evidence, and all just inferences which can be properly drawn therefrom by a jury, and as waiving all of his own evidence which conflicts with that of his adversary, and all inferences from his own evidence (although not in

conflict with his adversary's) which do not necessarily result therefrom. *Johnson's Admr. v. Chesapeake & Ohio Ry. Co.*, 91 Va. 171, approved. Upon the evidence in the case at bar the demurrer to the evidence was properly sustained.

YOUNG V. EASLEY AND OTHERS.—Decided at Richmond, January 7, 1897.—*Cardwell, J.* Absent, *Riely, J.*:

1. **WILLS**—*Income of trust fund—Liability for debts—Motive for gift.* A testator by will deposits with his executor, for the benefit of his daughter, a sum of money and certain personal property, the annual interest and income from which he directs "to be paid to her for her support" during her life.

Held: The interest and income are liable for her debts. The words "for her support" only show the motive for the gift.

MCCARTNEY V. TYRER.—Decided at Richmond, January 7, 1897.—*Riely, J.*:

1. **STATUTE OF LIMITATIONS**—*Personal defence—Exception to general rule—Case at bar—Mechanics' lien.* The defence of the statute of limitations is generally a personal privilege of the debtor to be asserted or waived by him at his election. But where a court of equity has taken possession of the estate of a debtor for the purposes of distribution and proceeded to ascertain the debts and incumbrances to enable it to administer and distribute the assets, an exception is allowed, and any creditor interested in the fund may interpose the bar of the statute of limitations. In the case at bar the right of the complainant to institute a suit to enforce his mechanics' lien was clearly barred by the act of limitations, and even if in such case the limitation be not of the right to the lien, but of the remedy only, still other creditors had the right to rely upon the bar of the statute.

WALLACE V. CITY OF RICHMOND.—Decided at Richmond, January 11, 1897.—*Cardwell, J.*:

1. **ORDINANCE OF CITY OF RICHMOND, APRIL 2, 1865**—*Directory clause.* So much of the ordinance of the Council of the city of Richmond, passed April 2, 1865, as directed receipts to be given to the owners of liquor destroyed in pursuance of the ordinance, was merely directory.

2. **ORDINANCE OF CITY OF RICHMOND, APRIL 2, 1865**—*Destruction of liquor—Ultra vires—Eminent domain—Police regulations.* The ordinance of the city of Richmond, adopted April 2, 1865, on the eve of the evacuation of the city by the Confederate forces, directing the destruction of all liquor in the city and pledging the city for its payment is *ultra vires* and void, and the owner of the liquor cannot recover the value thereof from the city. The destruction of the liquor was not an exercise of the city's power of eminent domain, but was a police regulation for the preservation of peace and good order in the city. The charter of the city limited its exercise of the right of eminent domain to the acquisition of "ground for the purpose of opening or extending its streets" or other public purposes. The power exercised by the city council was not conferred either in express terms or by fair implication by the city's charter or by the general laws; nor is its possession indispensable to the performance of its corporate duties, or the accomplish-